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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

K.A.,
Plaintiff,
vs.
MINDGEEK S.A.R.L., et al.,
Defendants.

Case No. 2:24-cv-04786-WLH-ADS

**DEFENDANT BERND
BERGMAIR'S APPLICATION
FOR LEAVE TO FILE UNDER
SEAL MATERIAL DESIGNATED
AS CONFIDENTIAL PURSUANT
TO A PROTECTIVE ORDER**

Date: January 31, 2025
Time: 1:30 p.m.
Courtroom: 9B
Judge: Hon. Wesley L. Hsu
Complaint Filed: June 17, 2021
Trial Date: None Set

1 Pursuant to Local Rule 79-5.2.2 and the Stipulated Protective Order entered
2 by this Court on November 8, 2024 (Dkt. 91), Defendant Bernd Bergmair hereby
3 submits this Application for Leave to File Under Seal Material Designated as
4 Confidential Pursuant to a Protective Order. In support of this Application,
5 Bergmair states as follows:

6 1. This application seeks leave to file under seal portions of the
7 contemporaneously-filed Defendant Bernd Bergmair's Reply in Support of Motion
8 to Dismiss Plaintiff's Complaint ("Bergmair Reply"), which references portions of
9 materials that were previously filed under seal, including: Plaintiff's Omnibus
10 Opposition to Defendants' Motions to Dismiss (ECF No. 96-1, "Plaintiff Opp.");
11 Defendant Bernd Bergmair's Motion to Dismiss the Second Amended Complaint in
12 *Fleites* (*Fleites* ECF No. 433, "Bergmair *Fleites* Motion"); Exhibits to the
13 Declaration from Ronald G. White in Support of Defendant Bernd Bergmair's
14 Motion to Dismiss the Second Amended Complaint in *Fleites* (*Fleites* ECF No. 433-
15 2, "White *Fleites* Decl."); the Declaration of Andreas Andreou and one attached
16 exhibit, submitted in support of the MindGeek Entity Defendants' Motion to Dismiss
17 the Second Amended Complaint in *Fleites* (*Fleites* ECF No. 440-2, "Andreou
18 Decl."); Plaintiff's Omnibus Opposition to Defendants' Motions to Dismiss the
19 Second Amended Complaint in *Fleites* (*Fleites* ECF No. 477, "Plaintiff *Fleites*
20 Opp."); and Defendant Bernd Bergmair's Reply in Support of Motion to Dismiss
21 Plaintiff's Second Amended Complaint in *Fleites* (*Fleites* ECF No. 499, "Bergmair
22 *Fleites* Reply" and together with Bergmair Reply, Plaintiff Opp., Bergmair *Fleites*
23 Motion, White *Fleites* Decl., Andreou Decl., Plaintiff *Fleites* Opp., and Bergmair
24 *Fleites* Reply, the "Materials Previously Filed Under Seal").

25 2. The Materials Previously Filed Under Seal are subject to applications
26 for leave to file under seal in *Fleites* and *K.A.*

3. Specifically, as set forth below, Bergmair requests that portions of the Bergmair Reply which refer to the Materials Previously Filed Under Seal be filed under seal, in whole or in part.

4. The Protective Order allows a party to designate material that it produces as “Confidential” if it qualifies for protection under Fed. R. Civ. P. 26(c), or as otherwise provided for in a party’s good cause statement.

I. Material Designated by Bergmair as Confidential or Highly Confidential

5. Bergmair seeks to seal portions of the Bergmair Reply which refer to the Materials Previously Filed Under Seal. The designated information constitutes personal financial information regarding Bergmair’s investment in a private company. This includes (1) the amount of money Bergmair invested in MindGeek, the amount of money for which he sold his MindGeek shares, and other sensitive information concerning financing of his investment; and (2) Bergmair’s shareholding and economic interests and other rights he received in exchange for his investment. Specifically, Bergmair requests that the following excerpts be filed under seal:

<u>MATERIAL REQUESTED FOR SEALING</u>	<u>REASON</u>
<ul style="list-style-type: none">• Bergmair Reply at:<ul style="list-style-type: none">○ 1:10-11○ 3:13-16○ 3:19-20○ 4:17-19○ 5:3-11○ 5:14	Amount of money Bergmair invested in MindGeek, amount of money for which he sold his MindGeek shares, and other sensitive information concerning financing of his investment

<u>MATERIAL REQUESTED FOR SEALING</u>	<u>REASON</u>
<ul style="list-style-type: none"> • Bergmair Reply at: <ul style="list-style-type: none"> ○ 2:2 ○ 2:4-9 ○ 4:14-15 ○ 4:21-5:2 ○ 4:27-28 (n.7) ○ 5:24-28 (n. 8) ○ 6:8-10 ○ 6:13-20 ○ 6:24-26 ○ 6:28 (n. 9) ○ 7:5-8 ○ 7:20-22 	Bergmair’s shareholding and economic interests and other rights he received in exchange for his investment

6. As previously set forth in the sealing applications, Bergmair’s narrowly tailored sealing request satisfies the standard for sealing set forth in (1) the sealing application filed with the Bergmair *Fleites* Motion (*Fleites* ECF No. 434); (2) the sealing application filed with the Bergmair *Fleites* Reply (*Fleites* ECF No. 502); and (3) the declaration filed in support of the sealing application filed with Plaintiff Opp. (ECF No. 98).

II. Material Designated as Confidential or Highly Confidential by Others

7. Local Rule 79-5.2.2 provides that where a Filing Party seeks to file a document containing information previously designated as confidential by another pursuant to a protective order, and the document cannot be suitably redacted by agreement, the Filing Party may file an Application for Leave to File Under Seal. The Rule further requires the Filing Party to confer with the Designating Party at least three days before seeking to file the document(s) under seal and, if sealing remains necessary, to serve a copy of the application and any supporting declaration on the Designating Party the same day the motion is filed, so that the Designating Party may, within four days, file a declaration that establishes why all or part of the designated material is sealable.

1 8. On January 8, 2025, Bergmair notified the MindGeek Entity
2 Defendants, Feras Antoon, and David Tassillo of his intent to rely on materials they
3 previously designated as confidential or highly confidential during jurisdictional
4 discovery.

5 9. Accordingly, under Local Rule 79-5.2.2, Bergmair has redacted the
6 designated material in the publicly filed version of the Bergmair Reply.

7 10. Bergmair is attaching the following to the sealed declaration in support
8 of this Application:

Attachment to Sealed Declaration in Support of this Application	Description
A	Unredacted version of the Bergmair Reply with the designated material highlighted

11. The parties have been served with a copy of this Application today
through CM/ECF system, and by email, as required by Local Rule 79-5.2.2.

Dated: January 8, 2025

Respectfully submitted,

/s/ Ronald G. White

Ronald G. White

CERTIFICATE OF SERVICE

The undersigned, the counsel of record for Bernd Bergmair, certifies that the foregoing instrument was served pursuant to the Federal Rules of Civil Procedure on January 8, 2025 upon all counsel of record via email.

Dated: January 8, 2025

Respectfully submitted,

/s/ Ronald G. White

RONALD G. WHITE

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